

Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of: DETERMINATION OF RATES AND TERMS FOR MAKING AND DISTRIBUTING PHONORECORDS (<i>Phonorecords IV</i>)	Docket No. 21-CRB-0001-PR (2023 – 2027)
<i>In re</i> Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate Those Performances (<i>Web V</i>)	Docket No. 19-CRB-0005-WR (2021-2025)

**STIPULATION REGARDING ACCESS TO AND USE OF
WEB V MATERIALS IN PHONO IV**

On July 16, 2021, Amazon.com Services LLC (“Amazon”), Google LLC (“Google”), Pandora Media, LLC (“Pandora”), and Spotify USA Inc. (“Spotify” and, together with Amazon, Google, and Pandora, the “Services”) filed a joint motion (the “Joint Motion”) requesting that the Judges allow all eligible participants in the *Phonorecords IV* proceeding (Docket Number 21-CRB0001-PR (2023-2027)) full access to and use of the restricted version of the Judges’ Initial Determination in *Webcasting V* (Docket Number 19-CRB-0005-WR (2021-2025)) and any future substantive rulings in that proceeding, including but not limited to any decision in response to motions for rehearing or clarification, the Final Determination, and any decision by the Register (together, the “*Webcasting V* Materials”) on an outside-counsel-only and experts-only basis, as

provided in the *Phonorecords IV* Protective Order and the *Webcasting V* Protective Order.¹ See Joint Motion, eCRB Doc. No. 25445, Phonorecords IV Docket No. 21-CRB0001-PR, at 1. The National Music Publishers’ Association and Nashville Songwriters Association International (the “Copyright Owners”) did not oppose the relief sought in the Joint Motion, including because the Joint Motion sought full access to the *Webcasting V* Materials for all eligible participants in *Phonorecords IV*, including the Copyright Owners. *Id.* at 1 n.1.

On July 30, 2021, SoundExchange Inc., Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp. (collectively, “SoundExchange”) filed a limited opposition to the Joint Motion. See SoundExchange’s Limited Opposition to Motion for Access to Restricted *Web V* Materials, eCRB Doc. No. 25550, Webcasting V Docket No. 19-CRB-0005-WR (the “Limited Opposition”).² The Limited Opposition sought to screen any outside counsel and experts involved in negotiating license agreements with sound recording companies on behalf of digital music services from discrete portions of the *Webcasting V* Materials. The Limited Opposition did not oppose access to or use of the *Webcasting V* Materials by Copyright Owners’ outside counsel or experts in *Phonorecords IV* (except in the limited circumstance of any such counsel or expert for the Copyright Owners involved in negotiating licenses with sound recording companies on behalf of digital music services, to the extent any such individuals exist).

¹ The Services proposed treating the restricted *Webcasting V* materials as restricted under both the *Phonorecords IV* and *Webcasting V* protective orders, with the more restrictive order governing in the event of a conflict between them, and SoundExchange agreed with such treatment. Limited Opposition at 3 n.2; SoundExchange Proposed Order at 2 n.2. Copyright Owners also agree to such treatment.

² On August 2, 2021, SoundExchange also filed a proposed order, see Proposed Order, Doc. No. 25554, Webcasting V Docket No. 19-CRB0005-WR (“SoundExchange Proposed Order”), consistent with the Limited Opposition.

Subsequently, Amazon, Spotify, Apple Inc. (“Apple”), and SoundExchange entered a stipulation by which Amazon, Spotify, and Apple agreed to be bound by the terms of the SoundExchange Proposed Order. *See* eCRB Doc. No. 25562, Webcasting V Docket No. 19-CRB-0005-WR, and eCRB Doc. No. 25561, Phonorecords IV Docket No. 21-CRB0001-PR (the “Stipulation”). In exchange, SoundExchange did not oppose immediate access to and use of the *Webcasting V* Materials by Amazon’s, Spotify’s, and Apple’s outside counsel and experts in *Phonorecords IV*, to the extent consistent with the SoundExchange Proposed Order. Stipulation at 2.

On August 9, 2021, the Judges issued an order granting in part the Joint Motion (the “August 9 Order”). The August 9 Order noted that the Joint Motion requested that the Judges “allow all eligible participants in this *Phonorecords IV* proceeding full access to and use of” the Webcasting V Materials. August 9 Order at 1. However, the August 9 Order limited such access only to outside counsel and experts for the Services that signed the Stipulation (Amazon, Apple and Spotify). *Id.* at 2.

To ensure that outside counsel and experts for the Copyright Owners in the *Phonorecords IV* proceeding can also immediately access and make use of the *Webcasting V* Materials, by this Stipulation, the Copyright Owners acknowledge and agree to be bound by the terms of the SoundExchange Proposed Order. For its part, SoundExchange confirms and agrees that it does not oppose modification of the Judges’ August 9, 2021 Order, or issuance of a new Order, to provide for access to and use of the *Webcasting V* Materials by outside counsel and

experts for the Copyright Owners, on the terms set out in the August 9 Order.

Dated: August 20, 2021

Respectfully submitted,

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Counsel for the Copyright Owners

Proof of Delivery

I hereby certify that on Friday, August 20, 2021, I provided a true and correct copy of the Stipulation Regarding Access To and Use of Web V Materials in Phono IV to the following:

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Amazon.com Services LLC, represented by Joshua D Branson, served via ESERVICE at jbranson@kellogghansen.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Zisk, Brian, represented by Brian Zisk, served via ESERVICE at brianzisk@gmail.com

Apple Inc., represented by Mary C Mazzello, served via ESERVICE at mary.mazzello@kirkland.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

Google LLC, represented by Gary R Greenstein, served via ESERVICE at ggreenstein@wsgr.com

Spotify USA Inc., represented by Joseph Wetzel, served via ESERVICE at joe.wetzel@lw.com

Joint Record Company Participants, represented by Susan Chertkof, served via ESERVICE at susan.chertkof@riaa.com

Signed: /s/ Benjamin K Semel